

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

**CORAL REEF OPERATING SYSTEMS, LLC D/B/A
CORAL REEF NURSING AND
REHABILITATION CENTER, LLC**

and

Case 12-CA-238299

1199 SEIU UNITED HEALTHCARE WORKERS EAST

Caroline Leonard, Esq.,
for the General Counsel.
Ingrid Perdomo, Administrator,
for the Respondent.
Denise Allegretti, Director,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

DONNA N. DAWSON, Administrative Law Judge. This case was tried in Miami, Florida, on August 20, 2019. The Charging Party, 1199 SEIU United Healthcare Workers East (the Union), filed original and amended charges on March 25 and May 21 of 2019. The General Counsel issued the complaint on May 24, 2019, alleging that Respondent, Coral Reef Operating Systems, LLC d/b/a Coral Reef Nursing and Rehabilitation Center, violated Section 8(a)(1) and (5) of the Act when Respondent failed and refused to execute an agreement upon which the parties had agreed to the terms and conditions of employment to be incorporated in a new collective-bargaining agreement.¹ On about July 2, Respondent filed a response generally denying that it had entered into an agreement with the Union.² Based on the totality of the circumstances, I have concluded that Respondent violated the Act as alleged.

¹ On August 1, 2019, the General Counsel filed an amendment to the Complaint amending par. 5(c) to read as follows: “At all times since at least March 1, 2014, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.” (GC Exh. 1(j).)

² On July 2 and 25, 2019, Respondent filed two submissions referencing an attached response that it allegedly electronically sent to NLRB on June 11, 2019. The response dated, but not filed, on June 11, 2019, stated that Respondent believed that contract negotiations had “broken down,” and Respondent was prepared to engage in further negotiations “should the union so desire.” Of note, the General Counsel did not include in its exhibits Respondent’s response with attachment referenced in the July 2 answer. (GC Exh. 1(i).) Nevertheless, since Respondent has neither admitted nor denied other allegations specifically set forth in pars. 1–5 and 6(b) of the complaint and amended complaint, I find that these allegations are deemed admitted.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed by the General Counsel,³ I make the following

FINDINGS OF FACT

I. JURISDICTION

Given that I have determined that jurisdictional and commerce allegations set forth in the complaint are deemed admitted, at all material times, Respondent has been a limited liability company engaged in the operation of a nursing and rehabilitation facility located at 9869 Southwest 152nd Street, Miami, Florida. During the past 12 months, Respondent, in conducting its business operations derived gross revenues in excess of \$100,000. In addition, in conducting its business operations during the same time, Respondent purchased and received at its Miami, Florida facility, goods valued in excess of \$50,000 directly from points outside the state of Florida. The parties admit, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties admit, and I find that at all relevant times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent and Union

At all relevant times, Ingrid Perdomo (Perdomo) has been Respondent's administrator and chief bargaining negotiator and Joyce Horna (Horna) has been Respondent's assistant administrator.⁴ As such, they have been supervisors and agents of Respondent within the meaning of Section 2(11) and (13) of the Act. They also served, at all relevant times, as Respondent's bargaining team for a new contract covering unit employees at Respondent's nursing and rehabilitation facility in Miami, Florida. Executive Director and owner, Michael Konig, was not present and did not otherwise participate in these proceedings.

At all relevant times, Denise Allegretti (Allegretti) has been the Union's chief negotiator and director for Respondent's nursing homes in Florida. Manny Bravo (Bravo) served as the facility's organizer. At the end of 2016, Allegretti was assigned to lead the bargaining for a new contract covering Respondent's nursing and rehabilitation facility in Miami, Florida. Allegretti reports to Dale Ewart (Ewart), the Union's assistant executive vice president in Florida.

The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

³ The Division of Judges denied Respondent's request for an extension of time to file a brief.

⁴ Joyce Horna was present, but Respondent did not call her as a witness. The only witnesses were Denise Allegretti for the General Counsel and Ingrid Perdomo for Respondent.

All full-time and regular part-time CNAs, laundry employees, maintenance employees, dietary employees and housekeeping employees; excluding all registered nurses, licensed practical nurses, confidential employees, office clerical employees, guards and supervisors as defined by the Act.

Since at least March 1, 2014, and at all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from March 1, 2014 through February 28, 2017 (GC Exh. 2). At all times since at least March 1, 2014, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit. There is no dispute, and the evidence confirms, that the 2014–2017 collective-bargaining agreement (CBA) was signed by Perdomo on behalf of Respondent and an individual named Grossberg Miranda on behalf of the Union. (See signatures at GC Exh. 2 compared to GC Exh. 8.)

B. Attempted Contract Negotiations/Bargaining Sessions

This case arises from the parties’ negotiations over a successor collective-bargaining agreement after the expiration of the aforementioned contract on February 28, 2017. Several months prior, on November 28, 2016, Ewart, requested in writing to Respondent’s owner and director, Michael Konig, to commence contract negotiation. In doing so, he asked Konig to contact him to discuss dates, times and a location for bargaining sessions. Ewart also included requests for information in preparation for bargaining. (GC Exhs. 3(a)-(b).) After receiving no response, Allegretti, as the assigned lead negotiator, resent the requests on January 11 and 26, 2017. Perdomo, Respondent’s Administrator, finally responded on February 1, 2017 stating that, “I have forwarded the request to the corp office.” (Tr. 28–30; GC Exhs. 4(a)-(b).) On May 15, 2017, the Union filed an unfair labor practice charge alleging that Respondent had violated Section 8(a)(5) of the Act by failing and refusing to bargain in good faith by failing to respond to its requests to bargain and for information. Shortly thereafter, Respondent finally furnished the requested information and bargaining dates, which prompted the Union to withdraw the charge after the proposed July 25, 2017 bargaining date. (Tr. 30–33; GC Exhs. 5(a)-(b), 6(a)-(b).)

1. July 25, 2017-First bargaining session⁵

In preparation for the first bargaining session on July 25, 2017, the union surveyed the employees regarding what they wanted the next contract to include. Allegretti used this information to draft the Union’s proposal. (Tr. 34; GC Exh. 7.) On behalf of the Union, Allegretti, Bravo, and Margarette Nerrette, the Union’s vice president for long-term care in Florida, attended the July 25 session in Perdomo’s office. Perdomo attended on behalf of Respondent as the lead negotiator. Allegretti handed Perdomo the Union’s proposal and they tentatively agreed to correct any typographical errors. She also summarized what the proposal contained including, but not limited to, differentials, wage increases, starting rate increases,

⁵ There is no dispute that each of the sessions lasted about 10–15 minutes; they all took place in Perdomo’s office. (Tr. 50).

steps for wages and PTO (personal time off) increases.⁶ Respondent did not present any proposals or counter-proposals at this meeting. In addition to the proposal, Allegretti also provided Perdomo with a “standard month-to-month extension” which both she and Perdomo signed. (Tr. 34–39; GC Exhs. 8–9.) The parties scheduled the next meeting for August 8, 2017.⁷

2. August 8, 2017-Second bargaining session

On August 8, 2017, Allegretti, Bravo and Nerrette attended for the Union and Perdomo and Horna represented Respondent. Perdomo, on behalf of Respondent, rejected all of the Union’s proposals and verbally set forth Respondent’s proposal to maintain the prior contract that had expired in February 2017, with the exception of reducing PTO for new hires to two weeks or 10 days per year, instead of 17 days in the expired contract.⁸ Allegretti asked questions about Respondent’s new PTO proposal and asked Perdomo to clarify whether “no other changes” also meant keeping the 6 month wage increases. Perdomo responded, “just keeping what’s currently in the contract,” rather than accept the Union’s proposed increases.⁹ The Union did not respond to Respondent’s proposal and Respondent never reduced it to writing. (Tr. 42–48; GC Exhs. 2, pp. 14–15, 9(c).)

3. April 25, 2018-Third bargaining session

The parties did not reconvene until April 25, 2018, due to Perdomo’s maternity leave which commenced shortly after the last meeting. Only Horna attended on behalf of Perdomo and Respondent. The same union representatives were present. (Tr. 46–47.) The Union advised that it was revising its proposal to reduce its initial wage increase to 15 cents every 6 months and asked Respondent to modify the prior contract’s new hire minimum wage rate of only \$8.50 per hour. Horna responded that she would present the Union’s modified proposal to Perdomo and that they would respond via email. The Union never received a response as promised. (Tr. 49–50; GC Exh. 9.)

4. July 31, 2018-Fourth bargaining session and Respondent’s termination of the extended CBA

Despite numerous attempts by Allegretti to schedule the next bargaining meeting, they did not meet until July 31, 2018. (GC Exh. 10). Both Perdomo and Horna attended for Respondent. Perdomo rejected the Union’s proposals, including the Union’s modifications presented on April 25. She did not, however, counter the Union’s proposal or otherwise modify

⁶ Allegretti testified that her handwritten notes on the Union’s proposal reflected “TAs” or temporary agreements and the dates the parties had discussed them.

⁷ See Allegretti’s “short” notations taken during bargaining sessions from July 25, 2017, through March 2019 and the occasions on which the Union filed unfair labor practice charges. (Tr. 40; GC Exhs. 9(a)-(e).)

⁸ PTO= Paid Time Off includes time off for holidays, sick, and vacation leave. (Tr. 44.)

⁹ Perdomo did not rebut what took place or what was said during the first four bargaining sessions. This includes the content of Respondent’s verbal proposal tendered by Respondent during the second session. Therefore, I credit Allegretti’s testimony regarding those meetings.

Respondent's verbal proposal made on August 8, 2017. During that meeting, Allegretti informed Perdomo and Horna that the Union sought an increase for new hire wages because of a rumor in the facility that Respondent had been hiring new employees at a higher wage rate than reflected in the expired agreement. Perdomo did not believe this report but said she would investigate. Therefore, Allegretti verbally requested that Respondent provide the Union with an updated bargaining unit list, along with current rates of pay, since they had not received one in over a year. (Tr. 51-54). Later that day, Perdomo informed Allegretti by email that Respondent had decided to terminate the month-to-month contract extension effective August 10, 2018. On August 1, 2018, by email, Allegretti clarified for Perdomo that their "month to month contract extension and giving 10 days of notice" meant that it would not expire until August 31, 2018. Perdomo agreed to extend the contract to August 31, 2018. (Tr. 54-55; GC Exh. 11.)

On August 1, 2018, Allegretti also sent Perdomo two additional emails. The first email included an example of the formatting for the bargaining list that she had requested on July 31. (GC Exhs. 9(d), 10.) She sent the second email to memorialize and confirm the Union's understanding of management's last proposal made on August 8, 2017, in other words:

We just want to make sure we understood managements last proposal at bargaining yesterday.

- 1- Employer proposed to maintain all current contract language including the semi-annual across the board wage increase of \$.15
- 2- All employees maintain current PTO schedule but New Employees hired shall receive 2 weeks of PTO.
- 3- Management rejected all other union proposals

Please let us know if we missed anything.

(Tr. 55-56; GC Exh. 12.)¹⁰ The Union never received a response to the emails. (Id.)

On August 8 and 20, 2018, Allegretti requested the status of the Union's information request and asked that Perdomo forward the information as soon as possible. (Tr. 61-63; GC Exh. 13(a), p. 1.) On September 6, 2018, Perdomo finally responded, stating that, "[o]ur contract extension expired on 8/31/18. Therefore, there is no bargaining to be done." On September 10, Allegretti replied that, "[w]e are entitled to this information as explained in our prior requests. We expect to receive the information from you no later than close of business on 9/17/18. If we do not receive it, we will be forced to take further action." (GC Exh. 13(b), p. 1.)¹¹ Respondent failed to furnish the information by September 17. Therefore, the Union

¹⁰ Perdomo objected to the email at GC Exh. 12, stating that she never received it, or she would have responded accordingly. She claimed that this email, unlike the others, did not contain her proper email address, i.e., there was no "@coralreefnursing.com" after her name, "iperdomo." I overruled the objection. Although this was not testimony, a review of subsequent emails contained the same August 1 email that was printed from a forwarding email showing that it had in fact been sent to Perdomo's full email address. Moreover, Perdomo never denied that she had in fact presented the Union with Respondent's verbal agreement on August 8, 2017. (Tr. 56-60, 74-5; GC Exh. 16(a).)

¹¹ I note that Perdomo's email system scrambled and interspersed "html" coding throughout some

filed another unfair labor practice charge with the NLRB, alleging that Respondent had failed to provide the information requested on July 31. This charge prompted Respondent to provide the requested information; therefore, the Union withdrew the charge.¹² (Tr. 64; GC Exhs. 14(a)-(b).)

5. Next and final bargaining session on January 9, 2019

The next negotiating meeting was scheduled for January 9, 2019. Prior to that meeting, the Union had decided that it would “fully concede to management’s last proposal since, you know, during the course of the 2 years...[t]hey never put anything else on the table.” (Tr. 66.) At the meeting, prior to presenting management officials with their signed concession proposal, the Union asked once more if Respondent “had anything else they wanted to present.” When management responded that they did not, the Union provided them with the signed proposal. (Tr. 66–70; GC Exh. 15.) According to Allegretti, Perdomo looked through the proposal and she (Allegretti) explained that the only changes to the same terms of the most recently expired CBA were some dates, typo corrections, and highlights to show where the Union had changed employees’ social security numbers to their identification numbers for privacy. It also included Respondent’s only proposed change—the 10 days of PTO for new hires. Allegretti also pointed out the updated effective dates from the expired contract to March 17, 2017, through February 28, 2021, as well as a change in the date for the next semi-annual wage increase to March 1, 2018, instead of March 1, 2017. Other than that procedural update, which favored Respondent, the three years of semi-annual wage increases of \$.15 an hour remained the same. (Tr. 66–70, 72; GC Exh. 15 compared to Exh. 2.) Perdomo never contradicted Allegretti’s account of the sessions up to this point.

Although Allegretti asked Perdomo to sign the agreement, she did not. Instead, she told them that she would review it with her “folks” and get back to the Union within one or two weeks. However, Allegretti’s notes dated January 9, 2019, the day of the last bargaining session, reflect that at the end of the session, “Ingrid [Perdomo] says she’ll sign [and] return next week.” (Tr. 72–73; GC Exh. 9(e).)¹³ Perdomo testified that she told Allegretti that “I was going to contact the executive director and we were going to go over the agreement and then I will send her a response.” (Tr. 90–91.)

Following the bargaining session on January 9, Allegretti sent Perdomo a follow-up email with a copy of the Union’s signed agreement, which reflected Respondent’s last and only proposal of August 8, 2017. (Tr. 42–50; GC Exhs. 2, pp. 14–15, 9(c)). She asked that Perdomo sign, scan and return an executed agreement to the Union by the next week. (GC Exh. 16(a).)

of the emails, for example, in GC Exh. 13(b), pp. 2–9 and GC Exh. 16 (Tr. 62–63, 72).

¹² The parties agreed that there was a typographical error in the charge date; instead of “September 17, 2019,” it should have read “September 17, 2018.” (Tr. 65–66.)

¹³ Perdomo stated that she did not understand some of the wording in Allegretti’s notes at GC Exhs. 9(a) through 9(e); she said she did not have an objection, but if she did not understand it, how would she be able to object. I overruled what I believed to be an objection and informed Perdomo that she would have the opportunity to question Allegretti regarding her notes on cross-examination. Perdomo did not do so. Therefore, I credit Allegretti’s testimony that she prepared these notes regarding the bargaining sessions “during” the sessions “[t]hat’s why they’re so short.” I also give credence to the contents of the notes. (Tr. 40–41, 80–81.)

Allegretti testified that she believed that this agreement was final and expected Respondent to sign it because the Union had conceded to all terms of Respondent's only contract proposal since 2017. There was no evidence that Perdomo questioned any changes or indicated in any way that Respondent may want to change major terms of the agreement. Allegretti also
 5 believed that Perdomo had the authority as the administrator to sign the agreement. (Tr. 38, 85.) The record shows that Perdomo had in fact signed the expired 2014-2017 CBA on behalf of Respondent, as well as the extension agreement in this case. (Tr. 25-26; GC Exh. 2 compared to GC Exh. 8.)

10 **6. Post-January 9, 2019 communications and Respondent's new proposed changes**

On January 28, 2019, Allegretti emailed Perdomo asking her to advise "where you are regarding signing and returning the contract to us;" on February 4, Allegretti emailed another request that Perdomo sign and return the contract within the week. (GC Exh. 16(a).) On
 15 February 4, Perdomo replied that she had "sent it to the Executive Director for final approval," and would send the agreement back to Allegretti as soon as he "gives" it. (GC Exh. 16(b), p. 1.) Again, Perdomo gave no indication that they would modify substantive terms of Respondent's proposal. On March 4, when she had not received further communication from Perdomo, Allegretti emailed Perdomo asking for the status of the signed agreement. (GC Exh.
 20 16(b), p. 1.)

Perdomo finally responded to Allegretti on March 6, 2019, at 2:35 p.m. She notified the Union that,

25 The agreement was reviewed by the Executive Director and he would like the following changed:

12.4 Wage Increases Remove all increases

30 13.6 Any PTO hours earned and not utilized will not be paid even if a resignation is given and entire notice is worked [sic]

22.1 Health insurance cost will be gross pay of employee multiplied by 9.5%

35 Please let me know if you agree with these changes and send me a revised agreement

(GC Exh. 16(c), pp. 1-2; Tr. 77-79.)

40 Allegretti responded on March 6 at 3:20 p.m. that "[b]ased on your email, this is regressive bargaining since the final document was the employers last proposal and you are now proposing to reduce that proposal. Please respond if this is accurate." (GC Exh. 16(c), p. 1.) Perdomo replied within 25 minutes (at 3:46 p.m.) that, "I did not sign the agreement nor did I initial any pages. This is what he is proposing." (Id.)

45 Between August 8, 2017, and March 6, 2019, Respondent never provided the Union with any modifications of its August 8, 2017 proposal. Further, Respondent never terminated

directly or indirectly its only proposal. There were no other communications between the parties regarding contract negotiations or proposals. (Tr. 79-81.) The Union in turn filed its initial charge in this case regarding Respondent's failure to bargain in good faith by failing to execute the agreement. (GC Exh. 1(a).)

5

C. Respondent's Case

As previously stated, Perdomo, who is not an attorney, but who represented Respondent at the hearing, did not present any witnesses. She did not question Horna who was present with her during all of the bargaining sessions, including the final one on January 9, 2019. Nor did she request to call Konig.

10

Following Allegretti's testimony on direct, the General Counsel furnished Perdomo (and Horna) with Allegretti's investigative affidavits to review. (Tr. 82.) On cross-examination, Perdomo asked Allegretti if it was her "understanding on January 9, 2019, the agreement that you gave to me was the final agreement?" Allegretti answered, "[t]hat was my understanding, yes." (Tr. 84.) This was Perdomo's only question of Allegretti. Subsequently, I asked Allegretti to tell me again why she believed that the agreement that she gave to Perdomo on January 9 was a final agreement. She responded that, "we, meaning the Union, had conceded to their proposal in its entirety, and they had no other proposals they put on the table in the 2 years we were going back and forth." (Tr. 85.)

15

20

After giving her opening statement, I informed Perdomo that the opening was not testimony to be considered in my decision, but that she could testify or give a statement of her recollection of events surrounding the negotiations and proposals. Initially, she stated that she was "not going to testify to anything. . . [t]hey presented their case, and we don't have any legal counsel here, and I don't feel comfortable, you know, being a witness to something that again, what I stated before, this was something that I was understanding that we were going to continue bargaining." I explained once more that the position she was taking, in other words, that it was her understanding that bargaining had not ended, did not constitute testimony or evidence. She replied that she did not "have anything else to present," and understood that the only evidence of record would be that which the General Counsel had presented.¹⁴ Finally, Perdomo took the stand. (Tr. 87-89.)

25

30

35

I asked Perdomo why she did not believe that there was a final agreement on January 9, 2019 when Allegretti presented her with a signed agreement that incorporated everything that Respondent had proposed thus far. She responded that:

40

So to my understanding, it was not a final agreement because we were still bargaining with the Union at such point that I did explain to Ms. Allegretti that I was going to contact the executive director and we were going to go over the agreement and then I will send her a response. I did send her a

¹⁴ Respondent, at no time, requested a continuance to obtain counsel. Although not testimony, it is noted that Konig who was only present during the first of two conference calls, indicated that Respondent could not afford an attorney. Perdomo represented Respondent in the second conference call and informed the parties and me at trial that she would be representing Respondent.

response, and I had indicated the changes that we wanted to have made in the agreement. And then from there, that's when the complaint was issued, and here we are.

5 (Tr. 90.) Next, we engaged in the following exchange:

Q. BY JUDGE DAWSON: Why is it that you all did not make these proposed -- the proposal that you submitted or the changes in March of 2019, why didn't the Company make those proposals before?

10 A. To my understanding, from what I have knowledge of from the contract, was that at the time that we were doing the initial bargaining and we were -- and they were making the proposals, the part of the health insurance was overlooked and so was the section of the paid time off.

15 Q. Overlooked by the Respondent?

A. Overlooked by myself and by the executive director.

Q. Okay. Do you have anything else to say on behalf of the Respondent?

A. No, I do not.

20 (Tr. 91.)

*Credibility*¹⁵

25 There are few if any disputed facts in this case. Respondent in its responses to the complaint essentially denied that it had violated the Act with its assertion that it believed that contract negotiations had “broken down” and that it was prepared to engage in further negotiations “should the union so desire.” Perdomo testified that she did not understand the Union’s proposed agreement of January 9, 2019, to be a final agreement because they were still bargaining with the Union. She explained that this was the reason that she told Allegretti that, 30 she “was going to contact the executive director and we were going to go over the agreement and then I will send her a response.” She further testified that she subsequently did send a response containing the changes that they wanted to include in the agreement. (Tr. 90.)

35 According to Allegretti, Perdomo “looked through” the signed agreement and told them that “[s]he had to review it with her folks, and she would get it back to us.” Allegretti believed that Perdomo “said it would only take her about a week or two.” (Tr. 73.) Allegretti’s notes from that meeting on January 9 state that Perdomo told them, “she’ll sign [and] return by next week.” (GC Exh. 9(e).) Allegretti testified that she believed that 40 with the Union having agreed to all of Respondent’s terms, the agreement would be

¹⁵ In assessing credibility, I have considered factors such as: the context of the witness's testimony, the quality of the witness's recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), *enfd. sub nom.*, 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions.

signed. This was especially the case since after August 2017, Respondent never mentioned in subsequent bargaining sessions that Respondent had considered further changes to the new hire PTO, health benefits, or wage rates.

5 I credit Allegretti's testimony along with her meeting notes taken on the date of the meeting, that she understood and that Perdomo told them that she would show Konig the agreement signed by the Union before signing and returning the agreement.¹⁶ I do not credit Perdomo's testimony that during the January 9 bargaining session, she did not believe that the agreement was final. In her February 4 email to Allegretti, Perdomo said
10 that she "sent [the agreement] to the executive director for final approval. I will send it to you as son [sic] as he gives [sic]."¹⁷ Perdomo did not indicate that either she or Konig would be making any material changes to the terms of the agreement nor did the evidence show that Allegretti had reason to expect them to do so. I believe that Perdomo understood and the evidence reflects that the Union's acquiescence to Respondent's proposal
15 constituted a final agreement without any substantial revisions by Perdomo or Konig.

In addition, I overruled Perdomo's objection to the admission of Allegretti's August 1, 2018 email requesting that she confirm the Union's understanding of Respondent's verbal proposal made on July 31, 2017. The evidence showed that the email
20 was in fact sent to her correct, complete email address. As such, I find that she received the email and failed to respond which further supports the Union's position that the initial proposal remained open. As stated, Respondent through either Perdomo or Konig never strayed from this proposal, or indicated otherwise, not even on January 19, 2019. (Tr. 55-56; GC Exh. 12.)

25 Perdomo's credibility is further diminished by her testimony that Respondent waited until March 2019 to make changes to its own proposal because "the part of the health insurance was overlooked and so was the section of paid time off. . . [o]verlooked by myself and by the executive director." (Tr. 91.) It is unbelievable that Respondent would have overlooked these
30 mandatory subjects of bargaining during the course of almost 2 years. To the contrary, it is apparent that Respondent could not possibly have passed over these provisions since the parties discussed wages and PTO in their bargaining sessions. Moreover, in Respondent's August 8, 2017 proposal, Respondent restricted the number of PTO days for new hires.

35 ANALYSIS

The General Counsel argues that Respondent is bound to the concession contract signed by the Union on January 9, 2019, and relies on a common law "meeting of the minds" theory. I agree that this theory is applicable in this case and that the Board has determined that a valid
40 collective-bargaining agreement hinges on whether the totality of the circumstances show that

¹⁶ My description of the events that transpired during the bargaining sessions is based on the testimony of Allegretti and the content of her bargaining notes, as well as to a very limited extent on Perdomo's brief testimony. Although there is little dispute about what took place or what was said, to the extent that there is any discrepancy between Allegretti's oral testimony and her bargaining notes, I will generally credit the notes, which were contemporaneous with the events.

¹⁷ Allegretti testified that she assumed that Perdomo meant that she sent it to Konig "for final approval and that she would send it to us." (Tr. 77.)

there was a “meeting of the minds” on all substantive issues and material terms of the contract. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). See also, *Delta Sandblasting Co., Inc.*, 367 NLRB No. 17, slip op. at 1 (2018); *Sunrise Nursing Home*, 325 NLRB 380, 389 (1998); *International Rural Electric Assn.*, 309 NLRB 1189 (1992). It is also based on the parties’
 5 expressed intentions regardless of whether all parties have signed the agreement. *Kelly’s Private Car Service*, 289 NLRB 30 (1988), enfd. 919 F.2d 839 (2d Cir. 1990). Nevertheless, it is the General Counsel’s burden to show by a preponderance of the evidence that there was a meeting of the minds between the Union and Respondent. *Cherry Valley Apartments*, 292 NLRB 38 (1988). The General Counsel has met its burden in this case, and Respondent has
 10 failed to rebut this presumption.

The Board has distinguished the meaning of “meeting of the minds” or “offer and acceptance” in labor law from that in commercial contract law. It is well established that, “technical rules of contract do not control whether a collective bargaining agreement has been
 15 reached,” and the “the common law rule that a rejection or counter proposal necessarily terminates the offer has little relevance in the collective bargaining setting.” Thus, if an unconditional offer is made by one party, “the other party may accept it after a reasonable period of time even if the accepting party has earlier rejected the offer or made a counterproposal; the “acceptance will therefore be binding on both parties provided the offer has not been withdrawn
 20 prior to acceptance.” *Inner City Broad*, 281 NLRB 1210, 1215–1216 (1986), citing *John Morrell & Co.*, 268 NLRB 304, 306–307 (1983); *Pepsi-Cola Bottling Co. v. NLRB*, 659 F.2d 87 (8th Cir. 1981) (and other cases). In *Inner City Broad*, above at 1216, the Board further concluded that despite the respondent’s unconditional offer, the agreement proffered by the union deviated from the employer’s offer regarding at least one significant term and therefore
 25 failed to express a meeting of the minds.

In *Delta Sandblasting Co., Inc.*, 367 NLRB No. 17, slip op. at 9, the Board set forth what the General Counsel must prove in order to establish a “meeting of the minds” as follows:

30 To prove a meeting of the minds, the General Counsel must prove that the parties’ objectively manifested intent, as demonstrated by their communications with each other, as well as their “tone and temperament,” shows that they agreed on all substantive issues and material terms contained in the alleged agreement. *Crittenton Hospital*, 343 NLRB 717, 718 (2004); *Diplomat Envelope Corp.*, 263
 35 NLRB 525, 535-536 (1982), enfd. 760 F.2d 253 (2d Cir. 1985). It is appropriate to evaluate the parties’ conduct against the backdrop of their prior negotiations. *Electrical Workers IBEW Local 938*, 200 NLRB 850 (1972), enfd. 492 F.2d 1240 (4th Cir. 1974).

40 First, I find that Perdomo had full authority to bargain and bind Respondent to a successor collective-bargaining agreement. The Board has rejected the argument that a respondent was not bound to an agreement where the chief negotiator lacked authority to bind it and the union was aware that the general manager had to approve any agreement reached between the parties. It confirmed a “well-settled” doctrine that, “when an agent is appointed to
 45 negotiate a collective-bargaining agreement that agent is deemed to have apparent authority to bind his principal in the absence of clear notice to the contrary.” *Hyatt Regency New Orleans*, above, at 281–282, citing *University of Bridgeport*, 229 NLRB 1074 (1977); see *Aptos*

Seascope Corp., 194 NLRB 540, 544 (1971). Further, a principal may only limit its agent's authority by giving clear and timely notice (i.e., provided before an agreement is reached). *A.W. Farrell & Son, Inc.*, 359 NLRB 1463, 1464 (2013). In this case, it is clear that Perdomo had authority to bargain on Respondent's behalf. She was the chief negotiator having missed only one session; sessions were delayed due to her unavailability; she communicated Respondent's August 8, 2017 proposal; and she agreed to extend the expired CBA month-to-month and later terminated that extension. Further, Perdomo signed the most recent expired agreement (GC Exhs. 2, 8.)¹⁸ Thus, I find that the parties not only had a meeting of the minds but that the Union reasonably understood Perdomo's having Konig review the agreement and get back to the Union within a week or two was merely a formality. The Union never expected, nor did Respondent ever suggest, that Respondent intended to change or renege on its open-ended agreement.

Next, there was no deviation by the Union in this case such as that by the union in *Inner City Broad*, above. Further, Respondent never gave any indication during the bargaining sessions between 2017 and January 2019 that it wanted to do away with unutilized PTO hours or change health insurance costs. Nor did Respondent ever suggest a desire to reduce the amount of the six-month wage rate increases much less remove them altogether. (Tr. 69-70.) Instead, Respondent never rescinded or changed the terms of its August 8, 2017 proposal to keep all terms of the prior contract except for the decrease in PTO days for newly hired employees. I have discredited Perdomo's testimony that she did not intend the Union's concession agreement to be final and therefore, find that the Union's acceptance of all terms of Respondent's unconditional proposal constituted a final agreement.

The Act does not require that an employer enter into an agreement, but "it does not follow. . . that, having reached an agreement, [an employer] can refuse to sign it, because he has never agreed to sign one." *H.J. Heinz Co. v. NLRB*, above at 525-526. The Supreme Court reasoned that "[t]he freedom of the employer to refuse to make an agreement relates to its terms in matters of substance and not, once it is reached, to its expression in a signed contract, the absence of which, as experience has shown, tends to frustrate the end sought" to "secure the legislative objective of collective bargaining." *Id.* Thus, a party's sudden rejection of its only proposal in almost 2 years, after the other party has conceded to all of its terms and signed it, is unlawful.

In *J. Hofert Co.*, 269 NLRB 520, 521-522 (1984), the employer expressly communicated to the union that its offer was contingent on the union accepting it within 8 days; otherwise, the employer would rescind the offer. The Board rejected the judge's finding that the respondent violated the act by failing to sign the agreement because the respondent's conditional offer was "explicit and unequivocal," and concluded that the respondent's proposal "was withdrawn...under the explicit terms of that offer." *Id.* See also *Inner City Broad*, 281 NLRB 1210, 1215-1216 (1986) (the offer is construed as being withdrawn if not accepted by the conditional deadline); *Hyatt Regency New Orleans*, 281 NLRB 279, 280-282 (1986) (no duty to execute an agreement where respondent clearly communicated that it had withdrawn its offer and confirmed that it had not been reinstated). *Pepsi-Cola Bottling Co. v. NLRB*, 259 F.2d

¹⁸ When comparing signatures on the prior agreement and the tentative agreement, and uncontroverted testimony, it appears that Perdomo signed both. (GC Exhs. 2, 8.)

87, 90 (8th Cir. 1981) (an offer, “once made, will remain on the table unless explicitly withdrawn by the offeror or unless circumstances arise which would lead the parties to reasonably believe that the offer had been withdrawn.”);¹⁹ *NLRB v. Quinn Rest. Corp.*, 14 F.3d 811, 815 (2d Cir. 1994) (refusal to sign an agreed upon contract and alter the terms violated the Act): *John Morrell & Co.*, 268 NLRB 304, 306–307 (1983).

Here, there is no doubt that Respondent’s offer remained on the bargaining table in the absence of an explicit withdrawal of the offer by Respondent. Based on the totality of the circumstances in this case, Respondent acted in bad faith by refusing to sign its own proposed agreement after the Union conceded to all of the terms. Further, Respondent’s bargaining history from the onset in 2016 reveals that Respondent continuously frustrated the process by failing to respond with bargaining dates and later by failing to provide requested information in the midst of bargaining. In fact, Perdomo abruptly and prematurely terminated the month-to-month extended contract and refused to respond to the information requests, claiming that “there was no bargaining to be done.” Respondent did not begin the initial bargaining or furnish the requested information until the Union pursued unfair labor practice charges in each instance. In addition, a review of the numerous emails regarding attempts to schedule bargaining show that Respondent caused most of the bargaining delays.

Respondent waited 3 more months after the January 9, 2019 bargaining session to make additional demands. Perdomo testified that they waited almost two years to modify the proposal because “at the time that we were doing the initial bargaining and we were -- and they were making the proposals,” both she and Konig had “overlooked” the contract sections regarding health insurance and PTO. (Tr. 91.). As previously determined, it is unbelievable that Perdomo and Konig inadvertently overlooked such important contract provisions such as health care, PTO, and wage increases during the negotiating sessions between July 31, 2017, and March 6, 2019. During those meetings, Respondent discussed with the Union and rejected all of the Union’s initial proposals regarding wage increases, pay differentials, and increases in PTO, and insisted that they maintain the terms of the expired agreement with the exception of decreasing PTO days for new hires. In addition, prior to Allegretti tendering the concession agreement signed by the Union, Perdomo assured her that Respondent did not have “anything else they wanted to present.”

Further, Respondent did not controvert testimony about the nature and substance of the Union’s January 9 concession agreement, including the dates in which it would be effective and initial date to commence the bi-annual wage increases. Nor did Respondent object to the agreement. Therefore, I find that Respondent’s incredible justification for its actions constitutes a pretext for stalling and frustrating the bargaining process and overall refusing to bargain in good faith.

Consequently, I find that Respondent failed and refused to bargain in good faith with the Union by not honoring and executing its own agreed upon bargaining agreement. In doing so, Respondent violated Section 8(a)(1) and (5) of the Act.

¹⁹ In *Pepsi-Cola Bottling Co.*, the respondent failed to give an explanation as to why it withdrew and changed the terms of its proposal.

CONCLUSIONS OF LAW

1. By failing to execute a previously agreed upon collective-bargaining agreement, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. By failing to execute a previously agreed upon collective-bargaining agreement, Respondent violated Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) and (5) of the Act by failing to execute a previously agreed upon collective bargaining agreement, Respondent is ordered to bargain in good faith by executing said agreement and giving it retroactive effect to January 9, 2019. Respondent is also ordered to make unit employees whole for any loss of earnings as a result of its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir.1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁰

ORDER

The Respondent, Coral Reef Operating Systems, LLC d/b/a Coral Reef Nursing and Rehabilitation Center, LLC, Miami, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to execute a previously agreed upon collective-bargaining agreement in violation of Section 8(1) and (5) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain with the Union in good faith by putting into writing, executing and adhering to the agreement reached on the terms and conditions of employment and signed by the Union on January 19, 2019, which is effective from March 1, 2017, through February

²⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

28, 2021, for Respondent's employees in the following bargaining unit exclusively represented by the Union:

All full-time and regular part-time CNAs, laundry employees, maintenance employees, dietary employees and housekeeping employees; excluding all registered nurses, licensed practical nurses, confidential employees, office clerical employees, guards and supervisors as defined by the Act.

(b) Make Unit employees whole for any loss of earnings and other benefits suffered as a result of Respondent's unlawful conduct, plus interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days after service by the Region, post at its facility in Miami, Florida copies of the attached notice marked "Appendix."²¹ Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 9, 2019.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 1, 2019



Donna N. Dawson
Administrative Law Judge

²¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to execute a previously agreed upon collective-bargaining agreement proposed to and accepted by the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL bargain with the Union in good faith by putting into writing, executing and adhering to the collective-agreement reached on the terms and conditions of employment and signed by the Union on January 19, 2019, which is effective from March 1, 2017, through February 28, 2021, for Respondent's employees in the following bargaining unit exclusively represented by the Union:

All full-time and regular part-time CNAs, laundry employees, maintenance employees, dietary employees and housekeeping employees; excluding all registered nurses, licensed practical nurses, confidential employees, office clerical employees, guards and supervisors as defined by the Act.

WE WILL make our Unit employees whole for any loss of earnings and other benefits and suffered as a result of our unlawful conduct, plus interest.

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

WE WILL compensate Unit employees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards, and file with the Regional Director of Region 12 a report allocating back pay awards to the appropriate calendar years.

CORAL REEF OPERATING SYSTEMS, LLC
D/B/A CORAL REEF NURSING &
REHABILITATION CENTER

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

South Trust Plaza, 201 E. Kennedy Boulevard, Suite 530, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8:00 a.m. to 4:30 p.m.

Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-238299 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (813) 228-2641.